

§ 127A-202.1. Discrimination against persons who serve in the National Guard and acts of reprisal prohibited.

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard or the National Guard of another state without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard or the National Guard of another state who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard or the National Guard of another state shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard or the National Guard of another state initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard or the National Guard of another state is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard or of the National Guard of another state during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

(f) This section shall also apply when a member of the North Carolina National Guard or the National Guard of another state is called into active duty at the direction of the President, the Governor, or by any other competent authority. (1997-153, s. 1; 2004-130, s. 3; 2015-161, s. 2.)